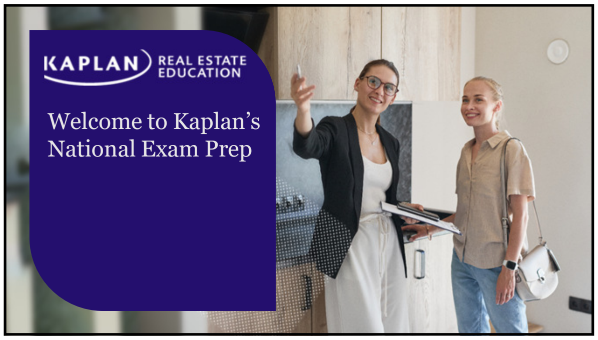
Table of Contents



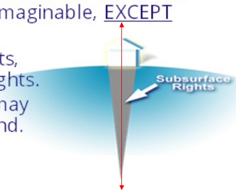
Property Ownership

- **Real property** is land, plus appurtenances that benefit the land.
- **Appurtenances** are things that transfer with the land when the land is transferred to another owner, such as improvements, rights, privileges, and fixtures.

Property Ownership

Surface, subsurface, and air rights

- Property is owned from the center of the earth and out into the heavens as far as imaginable, EXCEPT as limited by law.
- Includes surface rights, air rights, water rights, and subsurface rights.
- Rights are REAL property and may be sold separately from the land.



Property Ownership

- **Littoral rights** – water is NOT flowing
- **Riparian rights** – water IS flowing
  - L = Lake
  - R = River

Property Ownership

- **Personal property** is everything owned that is not real property.
- Personal property is also referred to as **chattel** or personalty. It is moveable.
- Transferred with a **bill of sale**
- **Emblement** is an annual crop that is a tenant farmer's personal property.

Property Ownership

- **Fixture** – personal property becoming real property
- **Annexation** – the process of personal property becoming real property
- **Severance** – real property becoming personal property
- **Trade fixture** – a tenant-installed fixture used for business.

Property Ownership

Economic characteristics of real property

- **Scarcity** means the supply of land is limited.
- **Improvements** built on a parcel of land affect that land's value and use.
- **Permanence of investment** – the return of investment tends to be long and stable.
- **Location** – people's preferences for an area (also referred to as **situs**)
- **Liquidity** –Land is not a liquid asset

Property Ownership

Physical characteristics of real property

- **Immobility** – you cannot move land.
- **Indestructibility** – land cannot be destroyed.
- **Uniqueness** – no two parcels of land are alike. This may also be referred to as **nonhomogeneity**.

Property Ownership

There are three types of legal descriptions:

1. Metes and Bounds
2. Lot and Block
3. Government Survey System

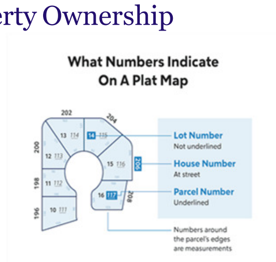
Property Ownership

Metes and bounds

- Metes: measures in feet, compass degrees
- Bounds: shape or boundaries
- Monuments: fixed objects that serve as reference points
- Begins and ends at point of beginning (POB) "starting at or commencing at"

Property Ownership

Lot and Block – according to a recorded plat called a map. This type of legal description is used most often on a property located in a typical subdivision.



Property Ownership

Government / Rectangular Survey

- Locates a parcel of land within a grid system.
- Meridian lines go N/S, as do the range lines that are parallel to the meridian
- Base lines go E/W, as do the tier lines that are parallel to the meridian
- Townships: six miles square; area of 36 square miles, further divided into 36 sections
- Sections: one mile square; 640 acres

Property Ownership

Units of Land Measurement

Mile: 5,280 feet

Furlong: 660 feet

Square mile: 640 acres

Acre: 43,560 square feet

Square yard: 9 square feet

Cubic yard: 27 cubic feet

Property Ownership

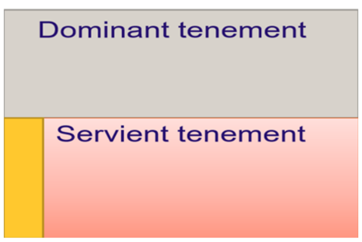
Liens (Encumbrances)

- **General** – applies to ALL real and personal property
- **Specific** – affects only a particular property
- **Voluntary lien** – a lien that the owner wanted (mortgage)
- **Involuntary lien** – a lien that the owner did not want (property tax lien)
- **Involuntary statutory liens** – ad valorem property tax liens, IRS liens, judgment liens, mechanics liens
- **Equitable liens** – a court-imposed lien such as a judgment lien

Property Ownership

- **Easement** is a nonpossessory interest in the land of another. Used for ingress (enter) and egress (exit) across someone else's property.
- **Servient** is parcel over which easement runs (burdened)
- **Dominant** is parcel that benefits

Property Ownership



Property Ownership

- **Appurtenant easement** with dominant and servient tenements and runs with the land
- **Easement in gross** held by utility/service provider company, only a servient tenement
- **Easement by prescription** use must result from adverse, hostile, open, notorious, and continuous use for a statutory period

Property Ownership

Easement termination

- Need no longer exists
- Merger
- By release of the right of the easement to the owner of the servient tenement
- Nonuse

Property Ownership

- **License** is a revocable personal privilege to enter the land of another for a specific purpose.
- **Encroachment** is the unauthorized use of another's land.
- **Encumbrance** is a charge, claim, or liability attached to real property; an imperfection or cloud on title.

Property Ownership

Holding title

- **Ownership in severalty** – ownership by one

Concurrent – Ownership by two or more:

- **Tenancy in common** – without right of survivorship
  - Owners may acquire the property at different times and have a different percentage of ownership
- **Joint tenancy** – with right of survivorship
  - Four unities must be present: TTIP = time, title, interest, and possession.

Property Ownership

Type of Ownership estate
Freehold estates
Fee simple/fee simple absolute – best type of ownership with the most **bundle of rights** and can last forever.

- Possession
- Control
- Enjoyment
- Exclusion
- Improve
- Encumber
- Sell
- Lease
- Transfer ownership

Property Ownership

Freehold Estates

- **Fee simple defeasible** (sometimes referred to as a qualified fee estate) - ownership is subject to certain conditions that are clearly defined in the deed.
- **Fee simple determinable** automatically ends when the purpose for which it was established terminates. However, if the defeasible estate is a fee simple subject to a condition subsequent, the original grantor must physically retake possession of the property to terminate.

Property Ownership

Freehold Estates

- **Life estate** – lasts the lifetime of the owner or lifetime of some other person
  - Receiver = life **tenant** (Grantee)
- **Pur autre vie** – based on the lifetime of someone other than the life tenant.

Property Ownership

- When a life estate ends, it becomes a fee simple absolute estate and goes to the party holding the **reversionary interest** (normally, the original grantor who created the life estate); or the **remainderman**, the party holding the remainder interest

Property Ownership

Estates

- **Estate for years** – has a starting and ending date; you do not need to give notice to terminate.
- **Periodic tenancy** – has a starting and ending date; have to give notice to terminate; if no notice is given, lease renews itself on a month to month basis.
- **Estate at will** – a less formal type of lease that can be terminated at any time with or without notice.
- **Tenancy at sufferance** – tenant overstays welcome; previously had the right to live there. If the tenant decides to pay rent and the landlord accepts, a holdover tenancy has been created.

Property Ownership

Common Interest Community Ownership
Condominium – individual interest in a unit and an undivided common interest in the common areas

Property Ownership

Cooperative (co-op) – a corporation holds title to the land and building. The corporation offers shares of stock to prospective tenants who receive a proprietary lease to the apartment for the life of the corporation. Because stock is personal property the tenant-owners do not own real estate.
Timeshare – each purchaser receives the right to occupy the facilities for a certain period (typically resort properties).

Property Ownership

- A trust is a legal device to hold property. One person (the trustor) transfers ownership of the trust property to a caretaker (the trustee) to hold or manage for the benefit of a third party (the beneficiary)

Land Use Controls

Government rights in land (public controls)

Police power – government power used for public health and safety and general welfare. Includes land compatibility.

Eminent domain – the right of the government to take private property for public use (condemnation is the action of the government taking property)

Taxation – ad valorem property taxes

Escheat – someone dies intestate without heirs, the government takes property

Land Use Controls

Private land use controls

- Deed restrictions
- Covenants, conditions, and restrictions (CC&Rs)
- HOAs

Rules that have already been put in place that the buyer needs to be aware of and agree to before purchasing the property.

Valuation

Appraiser's work

- The professional real estate appraiser provides a well-founded, unbiased opinion of the value.
- As of July 1, 1991, all federally related real estate appraisals must be performed by a licensed or certified appraiser in the state in which the property is located.

Valuation

Appraiser licensing

- Requirements vary by state.
- Appraisers follow the Uniform Standards of Professional Appraisal Practice (USPAP) established by the foundation's Appraisal Standards Board.

Valuation

Appraisal process

A systematic analysis of the factors that bear on the value of real estate; an orderly program by which the problem is defined; the work necessary to solve the problem is planned; the data involved are acquired, classified, analyzed and interpreted into an opinion of value; and the final opinion of value if presented in the form requested by the client.

Valuation

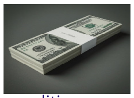
- **Market value** is what a property SHOULD sell for in a competitive and open market.
- **Market price** is what the property DOES sell for—the actual price paid (how much a seller is willing to sell the property for and how much a buyer is willing to pay).

Valuation

Characteristics/Elements of Value (DUST OR STUD)

- **Demand**
- **Utility/usefulness**
- **Scarcity**
- **Transferability**
- Memory aid: **DUST**

Valuation



- **Principle of anticipation** – value is created by the expectation that certain events will occur. (Income approach is based on this principle).
- **Principle of change** – no physical or economic condition remains constant.
- **Principle of contribution** – the value of any part of a property is measured by its effect on the value of the whole (swimming pool).

Valuation

- **Principle of substitution** – used in all appraisal methods. The value of anything is established by the cost to acquire an equally desirable substitute.
- **Principle of competition** – the interaction of supply and demand. Profitable businesses tend to attract competition.
- **Principle of conformity** – maximum value is created when a property is in harmony with its surroundings.

Valuation

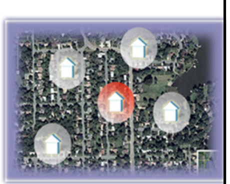
Principle of progression – the value of a lesser-quality property is enhanced when located in a higher-quality neighborhood. ↑

Principle of regression – the value of a better-quality property declines if it is surrounded by smaller or less desirable properties. ↓

Valuation

Sales approach/market data approach

- An estimate of value is obtained by comparing the property being appraised (subject) with recently sold properties (comparables/comps) that are similar to the subject property. If an adjustment must be made, it is always to the sales price of the comp property and never the subject property.



Valuation

Cost approach – new construction and special-purpose buildings. The appraiser is estimating how much it would cost to build the building today using either the reproduction cost OR the replacement cost.

Three types of depreciations in the cost approach
- **Physical depreciation** is wear and tear.
- **Functional obsolescence** is outdated, outmoded, or no longer desirable.
- **Economic (external) obsolescence** is a negative that originates outside the subject property.

Valuation

Income approach – for income (rent)-producing properties

Valuation

Net operating income (NOI)
- Potential yearly gross income (rent) minus allowances for vacancies and bad debt = effective gross income
- Effective gross income minus operating expenses equals net operating income (NOI).
  - Operating expenses do NOT include debt service (mortgage payments)
  - Debt service is used in determining cash flow: NOI – debt service = +/– cash flow

Valuation

Net operating income (NOI)

- The appraiser then estimates the rate of return (or yield), called capitalization rate (cap rate), that an investor would demand for investing in this property.
- NOI divided by the capitalization rate = estimate of the property's value
- Certain formulas are important in dealing with income property:
  - Net operating income (NOI) ÷ cap rate = value
  - Net operating income (NOI) ÷ value = cap rate
  - Cap rate × value = net operating income (NOI)

Valuation

Gross rent multiplier (GRM)

If a buyer is interested in purchasing a 1-4 residential rental property, the gross rent multiplier (GRM) could be used for a rough approximation of value. To establish an accurate multiplier, you need four to five recent sales and rental data. The formula is: sales price divided by monthly/annual gross rent = GRM. Once you have a multiplier, you multiply this number by the monthly or annual rent of the subject.

Valuation

Gross rent multiplier (GRM)

If a house recently sold for $155,000 and its monthly rental income was $1,250, the GRM for the property would be:

$155,000 divided by $1,250=124 GRM

If you have a property that has a $1,500 monthly income,

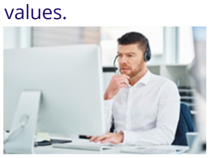
you would multiply this by the GRM of 124 (GRM x Rent = Value) = $186,000

Valuation

- **Comparative market analysis** – real estate licensees perform CMAs; not an appraisal
- **Broker's price opinion** – prepared just like the CMA; difference is who it is being done for. A sales agent or a broker can perform a BPO.

Valuation

Automated valuation method (AVM) – a type of software that combines data and statistics (algorithms) and determines an estimate of real estate market values.



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Financing

Financing

Points and loan origination fee

- Lenders charge discount points to increase the yield (profit) on a loan.
  - One **point** = 1% of the loan amount.
- The **loan origination fee** is what the lender charges to process and issue a loan.

Financing

- **Prepayment penalty** - some mortgage notes contain a **prepayment penalty clause**. This penalty occurs when the loan—or a portion of the loan—is repaid before it is due.

Financing

- The **loan to value** reflects the loan amount's ratio to the property's value. It will also reflect the maximum a lender will loan on a property.
- Value x LTV = max loan amount

Financing

Interest

- Percentage of profit the lender wants in return for using the lender's money
- State laws often control the maximum rate of interest that lenders can charge, depending on the type of loan

Financing

Principal, interest, taxes, and insurance (PITI)

- Monthly payment made by borrowers that includes the debt service (principal and interest), plus one month's worth of property taxes and one month's worth of the homeowner's insurance premium.

Financing

Debt-to-income ratios

- Housing only
- Housing plus monthly obligation, not including normal living expenses, i.e. a car loan and monthly payments on a credit card.

Financing

Credit history

- Current credit and closed credit
- A derogatory is an imperfection in a borrower's prior repayment of a debt.

Financing

Credit score

- FICO score developed by Fair Isaac and Company
- Required score depends on type of loan

Financing

Deed of trust – a real estate loan document signed by the borrower

Three-party instrument

- Borrower = trustor
- Lender = beneficiary
- Trustee = neutral third party who is conveyed the legal title to the property by the trustor

Financing

- When the loan is paid, the beneficiary notifies the trustee, who returns the legal title to the borrower using a deed of reconveyance, also known as a release deed.
- Borrower then records **deed of reconveyance**
- Buyer default = trustee can foreclose for the benefit of the lender

Trustee's deed (aka trustee's deed upon sale)

- Used when a trustee conveys the property to the winner of a public sale when the foreclosure is complete.

Financing

Promissory note – the legal instrument that evidences the debt that is secured by the mortgage or deed of trust

  - Held by the lender until the loan is fully repaid

Essential elements of a promissory note

- Personal promise of the borrower to repay a fixed amount
- Terms of repayment
- Signature of the borrower; the lender does not sign
- Promissory note alone does not create a lien on a property

Financing

Promissory note

Most real estate notes are negotiable and transferable.

Special provisions

- Acceleration clause – if the borrower defaults, the lender can demand immediate payment of the entire balance.
- Defeasance clause – when debt is paid, lien must be removed.
  - A mortgage is removed with a satisfaction.
  - A deed of trust is removed with a deed of reconveyance.
  - Satisfaction or reconveyance deed removes lien and should be recorded by borrower.

Financing

Promissory note

- Due-on-sale clause (alienation clause)
  - Property is sold, lender may demand immediate repayment
    - Failure to pay is default; may trigger acceleration
- Power of sale clause allows the lender to obtain a foreclosure without the use of the courts (varies by state)

Financing

Mortgage: two-party instrument

- A mortgage creates a lien
- Borrower is the mortgagor who gives the mortgage to the lender
- Lender is the mortgagee
  - Borrower=or
  - Lender=ee

Financing

Lien theory

- Equitable and legal title passes to the buyer at closing, and the borrower (mortgagor) gives a mortgage to the lender (mortgagee), pledging the property as collateral (security) for the loan.

Financing

Title theory

- The borrower (buyer) gets equitable title and the right of possession, and conveys bare legal title (naked title—without the right of possession) to a third-party trustee using a deed of trust. The trustee holds the deed of trust on behalf of the lender who has the promissory note for the loan on the property.
  - Trustor—borrower (buyer)
  - Trustee
  - Beneficiary—lender

Financing

Primary mortgage market

- Lenders originate mortgage loans and deal directly with borrowers.

Financing

Secondary mortgage market

- Loans purchased (promissory notes secured by mortgages and deeds of trust) from primary market lenders to supplement the mortgage and lending process.
  - Fannie Mae, Ginnie Mae, and Freddie Mac

Financing

Conventional loans

- Neither insured nor guaranteed by the government
- Must meet all the requirements of the secondary market
- May require private mortgage insurance (PMI) for LTVs higher than 80%

Financing

Fully amortized loan (fixed rate loan)

- Each payment pays the interest due and part of the principal balance.

Interest-only loans(term/straight)

- Only interest is paid during the term of the loan.

Partially amortized loans (balloon loan)

- Each payment pays the interest due and part of the principal balance, but the full amount of principal is not paid off by the end of the term. A large balloon payment is due sometime during the loan term.

Financing

Adjustable rate mortgage (ARM)

- Interest rate subject to change based on economic index or indicator
  - Index + margin = rate
  - May include adjustment caps and/or lifetime rate caps

Financing

FHA home loan

- FHA insures the lender against loss due to borrower default.
- A mortgage insurance premium (MIP) is paid by the borrower.
  - May be paid upfront or financed and paid monthly.
  - FHA insurance is called Mutual Mortgage Insurance (MMI)

Financing

FHA loan

- Loan funds come from approved lenders who set the interest rates charged.
- Must be owner-occupied
- Purchase contract must include an escape clause
- No prepayment penalty
- FHA loans made now are assumable

Financing

VA home loans

- VA guarantees lenders against losses on loans to eligible veterans
- Eligible veterans: active, veterans, or retired military reserve members
- No insurance premium

Financing

VA home loans
- Has a funding fee that can be financed
- No prepayment penalty or due-on-sale clause allowed
- Veteran must occupy the property as a home
- No down payment required; loan-to-value ratio can be up to 100%

Financing

USDA loans
- The United States Department of Agriculture (USDA) both makes loans and guarantees loans.
- These loans are made to low to moderate-income borrowers.

Financing

Seller financing
- Seller provides primary financing, a first loan and may also provide a junior loan
- The seller usually uses a promissory note and deed of trust or mortgage. The title transfers to the buyer, and the seller “takes back” a lien at closing. The seller becomes the lender. This may be referred to as a seller carry-back.

Financing

Contract for deed (land contract or installment contract)

- Purchase price paid in installments to the seller, and the seller delivers a deed when the final payment is made.
- Seller holds legal title, buyer holds equitable title.

Financing

Reverse mortgage

- Seniors only and only for a home
- Borrower receives a lump sum, monthly advances, or a credit line from the lender
- Amount borrowed is repaid upon death of the mortgagor, upon sale of the property, or when property is no longer the senior's place of residence
- Reverse mortgage is good example of negative amortization (growing debt); unpaid interest is added to the outstanding loan amount.

Financing

Home equity loan is any loan acquired that is not a purchase money loan. This might be a cash-out junior loan or a refinance.

- Some are paid out in a lump sum.
- Others are Home Equity Lines of Credit (**HELOC**).

Financing

- **Construction loan** is interim financing made available in installments (draws) as improvements are completed.
- **Bridge loan** is short-term financing to "bridge" the gap of time before a property is sold or longer-term financing is available.
- **Package loan** includes real property plus personal property
  - Example: furnished condominium

Financing

Blanket loan

- Typically used by developers
- Multiple parcels pledged as security for one loan
- **Partial release clause** allows individual parcels to be released from lien as the balance is paid down

Financing

Mortgage clauses

- **Acceleration clause** – allows lender to demand immediate payment
- **Defeasance clause** – when the loan is paid off and lender releases interest in property
- **Escalation clause** – allows the interest rate to go up (ARM loan)
- **Assumption clause** – allows for an approved buyer to assume the seller's existing loan
- **Subordination clause** – allows another lienholder to take higher priority in the public record (you are second in line)

Financing

Consumer Financial Protection Bureau

- A U.S government agency dedicated to making sure people are treated fairly by banks, lenders, and other financial institutions.

Financing

Real Estate Settlement Procedures Act (RESPA), Regulation X regulates lenders and standardizes real estate settlement practices in residential mortgage transactions.

- Requires disclosures be made to loan applicants concerning all closing costs the buyer will incur.
- Prohibits kickbacks and referral fees
- Allows rebates if structured correctly and all rules are followed

Financing

Truth In Lending Act (TILA) and Regulation Z

- Lender must disclose finance charges to the borrower (true cost of obtaining credit—APR)
- APR is the effective rate that includes the loan rate PLUS the total amount of the lender's finance charges expressed as a percentage.
- APR always higher than interest rate of the loan
- Three-day right of rescission on home equity loans and refinances

Financing

Truth in Lending

- Price and/or APR are the only specific terms allowed in advertising without triggering full disclosure. Triggers:
  - Percentage of down payment
  - Amount of any installment payment
  - Number of payments
  - Time period of payments
  - Finance charge
  - Interest rate of the loan

Financing

TILA-RESPA Integrated Disclosure (TRID)

- Two disclosure forms created by the Consumer Financial Protection Bureau (CFPB)
  - **Loan Estimate (LE)**
    - Estimates cost of mortgage loan and settlement costs
    - Delivered to borrower within three business days of loan application

Financing

TILA-RESPA Integrated Disclosure (TRID)

- **Closing Disclosure (CD)**
  - Actual loan and settlement costs
  - Received by borrower at least three business days before closing
  - New CD required if APR increases, prepayment penalty is added, or type of loan changes

Financing

Equal Credit Opportunity Act and Regulation B

Equal Credit Opportunity Act makes it unlawful for a creditor to discriminate against any applicant concerning any aspect of a credit transaction based on race, color, religion, national origin, sex, marital status, ***age***, or ***if the applicant's income is from a public assistance program***.

- If credit is denied, the applicant must be provided with written information on the denial.

Financing

Short sale

- Market value of the collateral property is insufficient to satisfy the loan balance.
- Lender may or may not agree to accept the reduced (deficient) price.
- Lender may require the seller to pay any deficiency, and the seller may have tax consequences.

Financing

Foreclosure

- Most foreclosure laws are created at the state level, but share some common concepts. For example, a foreclosure has two phases and in the following chronological order: 1) REINSTATEMENT (to bring the loan current), and then 2) REDEMPTION (to pay off the entire outstanding loan balance). If the loan is reinstated or redeemed in a timely manner, the foreclosure terminates. If the borrower cannot clear the default on time, the property goes to sale. If the sale proceeds are insufficient to pay off the foreclosing lien, the foreclosure sale will remove the junior liens against the property. The winner at the foreclosure sale has the right, based on state laws, to obtain title to the property.

Financing

Foreclosure

- **Judicial Foreclosure** follows state law. In general, however, a judicial foreclosure is handled in court, and the sale of the property cannot occur before a court order to sell is issued by a judge. A deficiency judgment may be issued, if the property sells for less than what is outstanding on the loan.
- **Non-Judicial Foreclosure** also follows state law. The Power of Sale clause may allow a foreclosure to occur outside of court, and this clause can be found in both mortgages and trust deeds.

Financing

- **Hazard insurance** – homeowner's insurance
- **Flood insurance** – separate from hazard (homeowner's) insurance. Lenders frequently require if property is in a flood plain.

Financing

Mortgage fraud is the act of inducing or securing a mortgage loan through either implied or expressed deceit.

Financing

Predatory lending

- Umbrella term for unfair or illegal lending practices.
- Occurs often in the subprime market.

Contracts

A **contract** is a voluntary, legally binding and enforceable agreement between parties to do or not do something specific.

Express vs. implied contracts

- An **express contract** may be oral or written; it exists when the parties "express" the terms and show their intentions verbally or in words.
- An **implied contract** is not in writing; it exists when the agreement between the parties is demonstrated by their actions and/or conduct.

Contracts

Elements of a valid contract (Co Ca Co La)
Consent: offer, acceptance, communication back to the offeror
Capacity: age, mental capacity of the parties to contract
Consideration: "value" that is given by the parties (adequate, valuable, good, sufficient)
Lawful objective: is purpose (subject matter) of a contract legal?

Contracts

- **Void** – if even one element is missing.
- **Voidable** – meets the elements of a valid contract; however, since consent was gained at the expense of one party, that party may legally be able to exit the contract
  - **Minor** – if someone under the age of majority enters into a real estate contract, they can go forward or not go forward, which makes the contract voidable.
  - Under **duress** (force used to make a party sign), menace (a threat was used to make a party sign), etc.

Contracts

Enforceability of contracts – enforceability allows a party to take a contract to court.
- Statue of Frauds: certain contracts must be written
- Statue of Limitations: There is a time limit in which to act. If not, in essence you are locked out of court. (Laches)

Contracts

Unenforceable
When June Jones agrees to sell her home to John Rodriguez, they agree with a handshake. June changes her mind and refuses to sell her home to John. This is an unenforceable contract. Most contracts to transfer real property need to be in writing as per the Statute of Frauds.

Contracts

Statute of Frauds – state law that requires certain contracts to be in writing and signed by the party to be charged to the agreement in order to be legally enforceable.

Exception: Oral lease for one year or less

Contracts

- **Offer** – an offer shows an intention to enter into a contract. It is made by the offeror.
- **Acceptance** of the offer must be communicated from the offeree to the offeror.
- **Contract** – after all parties have signed, initialed, and acceptance has been communicated, the offer becomes a contract.

Contracts

- **Counteroffer** – the rejection of the original offer along with a new offer.
- **Time is of the essence** – either the entire contract or specific elements of the contract must be performed within the time limits specified.

Contracts

Bilateral vs. unilateral

- **Bilateral contract**: Each party promises to perform in exchange for the other party's promise to perform.
  - Examples: Exclusive Listing Agreements, Purchase Contracts, Leases
- **Unilateral contract**: One party makes a promise, but must only honor it if the other party performs.
  - Examples: Open Listing, Option Agreement

Contracts

Option contract

- Seller agrees, in writing, to sell at an established price for an established period of time.
- Unilateral contract
- Seller consents to option contract in exchange for a typically non-refundable option fee paid by the prospective buyer

Contracts

Executory vs. executed

- Signed, initialed, and acceptance communicated = offer becomes a contract (**executory period**).
- When everyone has finished their work and the buyer and seller close on the property, contract is **executed;** it is a done deal.

Contracts

Electronic signatures and paperless transactions

- Documents transmitted electronically are considered written documents.
- Electronic signatures of the parties to a transaction are considered legal and binding.

Contracts

- **Breach of contract** – one of the parties did not do what they promised in the contract, so they are in **default**
  - **Liquidated damages** – earnest money
  - **Compensatory damages** – judge orders one party to compensate the injured party
  - **Punitive damages** – judge orders one party to pay damages to the injured party as punishment
  - **Suit for specific performance** – judge orders the party to perform in the contract as they promised in the contract

Contracts

Termination, rescission, and cancellation of contracts

- Impossibility of performance/legal impossibility
- Mutual rescission: a written and signed agreement by all parties to cancel
- Death
- Operation of law

Contracts

- An **Addendum** adds information.
- An **Amendment** changes information in a contract if all parties agree to the change.

Contracts

Contingencies

- A condition that must be satisfied before a contract is fully enforceable.
- Common contingencies include the following:
  - Financing
  - Appraisal
  - Sale of current residence

Contracts

Lease contract – an agreement transferring the right of exclusive possession and use of the real estate for a definite period of time. The lessor (owner) grants the right of possession to the lessee (tenant) but retains a reversionary right.

Contracts

Lease-purchase contracts – an agreement in which part of the rent payment is applicable toward a set purchase price. Title is transferred from lessor to lessee when the lessor receives the prearranged total price.

Contracts

Either a gross or a net lease may be a **percentage lease**. Generally used for retail business leases. Rent is based on a minimum fixed rental fee plus a percentage of the gross income received by the tenant doing business on the leased property.

Contracts

Net lease – the most common form of commercial lease agreement. Tenant is responsible for a base rent payment, plus additional expenses associated with the property.

Agency

In real estate, **agency** is the relationship between a real estate broker (the agent) and the party the broker represents (the principal) in a transaction.

Agency

Fiduciary duties agents owe to clients
Obedience
Loyalty (terminates when agency terminates)
Disclosure
Confidentiality (lasts forever)
Accounting
Reasonable care

Agency

Third party/customer—nonagency relationship

- Party who is not represented by the agent in a transaction.
- At first substantive contact with a customer, an agent must disclose they are not an agent of the customer and may share the customer's confidential information with their client.
- Fiduciary duties are not owed to a customer, although customers must be treated fairly and honestly. Disclosure and proper accounting for money (no commingling or conversion) are also owed them.

Agency

Facilitator/transaction brokers—nonagency relationship

- Real estate licensee provides services to parties in a transaction without representing any party's interests.
- Cannot advocate for anyone because they represent no one.

Agency

Subagency – agent who represents another broker's client through the cooperation with, and the consent of, the representing broker.

Agency

How is agency established?
Buyer agency = Buyer Representation Agreement
Seller agency = Listing Agreement

- Open Listing
- Exclusive Agency
- Exclusive Right to Sell
- Net Listing (illegal in some states)
- Option Listing (illegal in some states)

Agency

Termination of agency

- Expiration of agreement
- Completion of performance
- Termination by force of law
- Destruction of property
- Death of the principal or the broker (death of sales agent does not terminate agency)
- Mutual agreement
- Breach of contract

Agency

- **Universal agency** – the broadest of all. Agent/broker is Attorney in Fact with unlimited ability to bind." To "Under a Power of Attorney, the agent is called an Attorney-in-Fact, and may have an unlimited ability to bind the principal."
- **General agency** –agent is authorized to perform a series of acts associated with the continued operation of a particular business, with limited authority to bind the principal.

Agency

- **Special agency** – the most limited; the agent is authorized to perform a particular job and has no authority to make decisions for the principal. The buyer representation agreement and the listing agreement create special agency relationships.

Agency

Disclosure of agency/representation is always at the first contact and can be oral or in writing.

Agency

Conflicts of interest/self interest

- A licensee must disclose if they are the buyer or seller in the transaction or are representing a first-degree relative.

Agency

- **Implied agency** – created through the unintentional, inadvertent, or accidental actions or behavior of the parties.
- **Dual agency** – a broker is representing the buyer and the seller (see state rules).

Property Disclosure

Seller's Property Condition Disclosure Form

- Most states require the seller of residential property to complete a property disclosure statement.
- Owners (never agents) complete the seller's disclosure to the best of their knowledge.

Property Disclosure

Property conditions that may require an inspection or survey

- **Inspection:** general inspection, foundation, mold, environmental, electrical, plumbing, roofing
- **Survey:** general survey for property boundaries, encroachments, easements, rights-of-ways

Property Disclosure

Lead-based paint

- Lead-based paint addendum required by federal law in properties built before 1978
- Required to disclose presence; does not have to remediate
- "Protect Your Family from Lead in Your Home" educates on risks associated with lead-based paint
- Buyers have the right to 10-day period to conduct an inspection
- Disclosures must be kept for at least three years
- Failure to comply could result in fines and disciplinary action

Property Disclosure

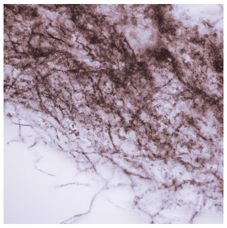
Asbestos

- Mineral used in buildings that can cause respiratory disease.
- Asbestos was used before 1978 in a variety of building materials.
- Harmful only if the fibers are friable (broken and potentially airborne).
- If a building is being demolished or renovated, abatement (removal) should be done by a licensed professional before demolition.

Property Disclosure

Asbestos

- Encapsulation (sealing in place) is often a better choice than removing asbestos, because there is less of a risk of exposing the fibers.
- There is no federal disclosure regarding asbestos, but states may have one.



Property Disclosure

Radon

- Naturally occurring odorless, radioactive gas
- Moves from the ground to the atmosphere
- Creates a hazard if trapped in a building. It can cause lung cancer
- Relatively easy to test for but impossible to detect without testing
- Mitigated by adding a ventilation system
- No federal disclosure regarding radon, but states may have one

Property Disclosures

Mold

- Toxic mold is created by excess moisture.
- Not all molds are hazardous. Mold can grow anywhere there is oxygen, moisture, and an organic food source.
- No federal disclosure law for mold. There may be state disclosure regulations.
- Sellers must disclose if there was or is a mold issue.
- Possible indications of mold: musty smell, water damage, high humidity, or water leaks

Property Disclosures

CERCLA – The federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund, authorizes the President to respond to releases or threatened releases of hazardous substances into the environment. CERCLA authorities complement those of the Resource Conservation and Recovery Act, which primarily regulates ongoing hazardous waste handling and disposal.

Property Disclosures

SARA

- The Superfund Amendments and Reauthorization Act amended CERCLA (1980) on October 17, 1986.
- Stressed the importance of permanent remedies and innovative treatment technologies in cleaning up hazardous waste sites

Property Disclosures

Clean Air Act

- Comprehensive federal law that regulates air emissions from stationary and mobile sources. Among other things, this law authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants.

Property Disclosures

Clean Water Act

- Establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

Transfer of Title

General warranty deed

- Provides the ***greatest protection*** to the grantee
  - Covenant of seisin—grantor has the right to convey title
  - Covenant against encumbrances
  - Covenant of quiet enjoyment—no other party has a legal ownership interest
  - Covenant of further assurance—grantor will obtain document(s) necessary to convey good title
  - Covenant of warranty forever—grantor will compensate the grantee if title fails at any future time

Transfer of Title

General warranty deed

- Grantor promises to defend the title against any claim arising from the time the grantor owned the property, as well as during the time all previous parties owned the property.

Transfer of Title

Special/limited warranty deed

- Warrants only against title defects that occurred during the grantor's period of ownership and makes NO promises regarding any claims that occurred BEFORE the grantor(s) initially took title.

Transfer of Title

Bargain and sale deed

- Implies that the grantor holds title and possession of the property, but there are no express warranties against encumbrances.

Transfer of Title

Quitclaim deed

- Provides the least protection of any deed, carries no covenants or warranties (no promises), and conveys whatever interest the grantor has when the deed is delivered.

Transfer of Title

Trustee's deed (aka trustee's deed upon sale)

- Used when a trustee conveys the property to the winner of a public sale when the foreclosure is complete.

Transfer of Title

Deed executed pursuant to a court order

- Established by state statute and used to convey title to property that is transferred by a court order or a will

Transfer of Title

Essential elements of a valid deed

- All deeds must be in writing.
- Grantor is the owner who transfers the title; grantee is the party who acquires the title.
- Valid deed
  - Grantor must be legally competent to convey title.
  - Mental impairment at time of signing makes the deed voidable.
  - A deed signed by a minor is voidable.
  - If a grantor is declared incompetent by a judge, the deed is void.
  - The deed should include all names used by the grantor.

Transfer of Title

Essential elements of a valid deed

- Must include an identifiable grantee named in the deed with reasonable certainty of their identity.
- There must be consideration, which is anything of value, and a clause acknowledging that the grantor has received consideration.
- Must include a granting clause stating the grantor's intention to convey the property.
- There must be an accurate legal description of the property being conveyed.

Transfer of Title

Essential elements of a valid deed

- Must include a signature of all grantors conveying title.
- The grantor must deliver the deed, and the grantee must accept it for title to transfer to the grantee.
- When the deed has been delivered to an agent of the grantor, delivery is completed.
- While it is customary to record deeds, they do not need to be recorded to be valid between the parties.

Transfer of Title

- **Abstract of title** – a historical summary of all conveyances and encumbrances that have ever been recorded on a property.
- **Chain of title** – the record of a property's successive ownership.
- **Quiet title lawsuit** – a legal action (lawsuit) to clear title problems.
- **Title policy** – policy determines if the title is insurable based on a review of the public records. The company will defend any lawsuit based on an insurable defect and pay claims if the title proves to be defective.

Transfer of Title

Marketable title

- Title to real property with no serious defects or doubtful questions of law or fact to prove its validity (clouds), does not expose the purchaser to litigation or threaten quiet enjoyment of the property, and can convince a reasonably well-informed and prudent purchaser that the property could be sold or mortgaged at a later time.

Transfer of Title

- **Defects on title, clouds on title** – any unreleased lien or encumbrance that may impair the marketability of title or cast doubt on the title's validity.
- **Voluntary alienation** – voluntary transfer of real property.
- **Involuntary alienation** – transfer of real property interests without the owner's consent.

Transfer of Title

Transfer of ownership

- The deed is signed by the grantor.
- The deed is delivered to and accepted by the grantee.
- It is always advantageous to record the deed with the county clerk's office in the county where the property is located.
- Recording a document gives **constructive notice** of the deed, that is legally-implied notice to all the world. **Actual notice** is the person saying that they own the property.

Transfer of Title

Settlement procedures

- Prorations occur during settlement.
- If an escrow is used, the escrow officer would act as the settlement agent.
- If no escrow exists, a settlement agent would be retained.

Transfer of Title

- **Home warranties (residential service contracts)** – a home warranty, also known as a residential service contract between the owner of the property and the home warranty company that covers repairs and replacements on certain things in the home for a certain length of time.
- **New construction warranties** – covers the structure of new construction property, workmanship, and systems.

Transfer of Title

Special issues in transferring foreclosed properties

- Transfers of a property after a foreclosure sale are usually done with a Trustee's Deed or a Sheriff's Deed.
- Some sales may be subject to a buyer's redemption period. The buyer can maintain ownership of the property by paying all sums due, including the costs of collection.
  - If the buyer redeems the property, the high bidder of the foreclosure sale would receive their money back.

Transfer of Title

Special issues in probate transactions

- The probate court may retain jurisdiction over the sale of the real property in the estate.
- The executor or administrator of the estate may list the property for sale.
- They may agree to a contract for the sale subject to the court's approval.
- State laws may require that the probate court allow other bidders to bid at the court's approval hearing. The probate court may have authority to set the agent's commission.

Practice of Real Estate

Federal Fair Housing Act

- The Civil Rights Act of 1866 prohibited any type of discrimination based on race.
- The Federal Fair Housing Act of 1968 prohibited discrimination in housing based on race, color, religion, or national origin.
- The Housing and Community Development Act of 1974 added sex.
- The Fair Housing Amendments Act (1988) included handicap/disability and familial status.

Practice of Real Estate

Federal Fair Housing Act

- Familial status protects pregnant women and families with children.
- Handicap/disability protects those with any physical or mental impairment that substantially limits one or more major life activities.
  - HIV/AIDS
  - Alcoholics and drug addicts seeking treatment
  - Landlords must allow a disabled tenant to make changes to a unit to accommodate a disability at the tenant's expense.
  - Tenant to return the property to original condition

Practice of Real Estate

Exemptions to Fair Housing Act

- No exceptions with regard to racial discrimination.
- Exemptions
  - A non-licensed owner when renting or selling their single-family home
  - A non-licensed owner renting a four-unit property, as long as the owner occupies one of the units

Practice of Real Estate

Exemptions to Fair Housing Act

- Senior housing
  - Buildings with at least 80% of the occupants ages 55 or older
  - Housing restricted to persons ages 62 or older
- Housing expressly operated by organizations or private clubs that limit occupancy to their members only

Practice of Real Estate

Protected classes under Federal Fair Housing

FRESH CORN
Familial status
Race
E
Sex (includes sexual orientation and gender identity)
Handicap/disability
Color
O
Religion
National origin

Practice of Real Estate

Protections against discrimination based on gender identity and sexual orientation

- On June 15, 2020, the Supreme Court of the United States issued its landmark decision in the case *Bostock v. Clayton County*, which held that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) includes employment discrimination against an individual on the basis of sexual orientation or transgender status.

Practice of Real Estate

Steering – channeling a potential buyer to or away from an area as a means of discrimination against the buyer.
Blockbusting – a licensee encourages property owners to sell by claiming that protected classes of people are moving into the neighborhood, which will have a negative impact on property values.
Redlining – refusing to make mortgage loans or issue insurance policies in specific areas or neighborhoods because of the nature of the area and/or the protected classes who live there.

Practice of Real Estate

Fair housing advertising rules

- No advertisement may include language indicating either a preference or a limitation based on protected classes
- It is best to describe the property, not who should or should not live there.
- Media used in advertising cannot target one population to the exclusion of others

Practice of Real Estate

Americans with Disabilities Act (ADA)

- Ensure equal access to public accommodations for disabled people.
  - Access to facilities and services must be provided when reasonably achievable in existing buildings, and in all new commercial construction.

Practice of Real Estate

Employee

- Employing broker withholds taxes from pay.
- A broker controls how and when work is completed by the employee and may offer benefits.

Independent contractor

- Must have a written and signed agreement stating they may set their own work hours and will pay their own taxes.
- Broker does not exercise the same degree of control over IC work and does not provide benefits.
- Income is based on sales production, and not on the number of hours they work.

Practice of Real Estate

Federal Sherman Antitrust Act

- Prohibits anticompetitive behavior such as price-fixing, illegal boycotting, and illegal tie-in arrangements
- Price-fixing occurs when competitors all agree to charge the same rates/prices
  - Illegal, inhibits competition
  - Compensation paid to brokers is always negotiable

Practice of Real Estate

National Do Not Call Registry

- Telephone numbers of consumers who have indicated their preference to limit telemarketing calls.
- Licensees may contact consumers on this list for up to three months after the consumer has made the first contact.
- Licensees may call consumers on this list with whom they have an established business relationship for up to 18 months after the consumer's last purchase, delivery, payment, and so on.

Practice of Real Estate

CAN-SPAM Act

- Sets the rules for commercial email, establishes requirements for commercial messages, gives recipients the right to opt out of future emails, and spells out tough penalties for violations.

Practice of Real Estate

Duties when handling funds of others in transactions – trust accounts

- A trust account is a demand account (allows for free deposit and withdrawal of funds) set up by a broker to hold other people's money separate from the broker's own personal or operating accounts.
- The trust account may also be called an earnest money account or an escrow account

Practice of Real Estate

Duties – trust accounts

- Broker is responsible for trust monies, including commingling and conversion.
  - Commingle: mix personal or business monies with any funds in a trust account.
    - May maintain a required minimum balance
    - May pay bank service fees/charges
  - A broker may not convert trust account funds to pay for personal or company operating expenses (conversion).